

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHARLES J. POTTER,

Plaintiff,

v.

CITY OF SPOKANE, COREY
LYONS, and JAKE JENSEN,

Defendants.

NO. CV-11-281-RHW

**ORDER DENYING MOTIONS
FOR SUMMARY JUDGMENT;
GRANTING DEFENDANTS'
MOTION FOR TRIAL
CONTINUANCE**

Before the Court are Plaintiff's Motion for Summary Judgment, ECF No. 26, and Defendants' Motion for Summary Judgment, ECF No. 19. The motions were heard without oral argument.

The Ninth Circuit has instructed that because the excessive force inquiry nearly always requires a jury to sift through disputed factual contentions to come to their own conclusions based on the reasonable inferences from the evidence, summary judgment as a matter of law on excessive force cases should be granted sparingly. *Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005). The Court heeds the Circuit's caution in this case. Here, the video is inconclusive as to the timing of the arrest, the existence of probable cause, and need to use force in arresting Plaintiff. As such, summary judgment is not appropriate for either party with respect to Plaintiff's Fourth Amendment claim (excessive force and warrantless arrest without probable cause). Questions of fact also exist with respect to Plaintiff's First Amendment claim as it is not clear why Plaintiff was arrested.

**ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT;
GRANTING DEFENDANTS' MOTION FOR TRIAL CONTINUANCE ~ 1**

Also before the Court is Defendant's Motion for Trial Continuance. A telephonic hearing was held on the motion on January 7, 2013. At the hearing, the parties agreed to continue the trial.

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, ECF No. 26, is **DENIED**.
2. Defendants' Motion for Summary Judgment, ECF No. 19, is **DENIED**.
3. Defendants' Motion for Trial Continuance, ECF No. 62, is **GRANTED**.
4. Defendants' Motion to Expedite, ECF No. 65, is **GRANTED**.
5. Stipulated Motion for Extension of Time to File Motions in Limine, ECF No. 69, is **DENIED AS MOOT**.

6. Stipulated Motion to Expedite the parties Stipulated Motion to Continue Motion in Limine Deadlines, ECF No. 72, is **DENIED AS MOOT**.

7. The trial date on February 4, 2013 is stricken and **continued to June 24, 2013**, at 9:00 a.m., in Spokane, Washington. The Court will file an Amended Scheduling Order outlining the new trial deadlines.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide copies to counsel.

DATED this 11th day of January, 2013.

s/Robert H. Whaley
ROBERT H. WHALEY
United States District Court

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